

305.303

notice shall not be used solely to determine the size classification of respondents for a proposed R & D acquisition. In such instances, a “Small Business Sources Sought” notice may be used (*see 319.202-2*), in lieu of the procedures in this section.

(3) OPDIVs shall follow the standard HHS instructions for completing an R & D Sources Sought notice. The template for the notice is available on the ASFR/OGAPA/DA Internet Web site. The Contracting Officer shall post the notice in FedBizOpps by selecting and completing a Sources Sought notice, accessible on the FedBizOpps “Notices” page at: <http://www.fedbizopps.gov>. Additional information may be included in the notice in accordance with OPDIV procedures. The Contracting Officer shall document, in the form of a memorandum to the file, the results of the review by technical personnel of information submitted in response to the notice, including whether each respondent appears to be capable of performing the requirement. The Contracting Officer shall attach a copy of the analysis provided by the technical personnel to the memorandum.

(4) In instances where a sufficient number of sources has not been identified to compete for a non-R & D project, an OPDIV may use the procedures specified in *310.001*, including the issuance of a “Sources Sought” notice, as appropriate, in lieu of the procedures in this section.

Subpart 305.3—Synopsis of Contract Awards

305.303 Announcement of contract awards.

(a) *Public Announcement.* The Contracting Officer shall report awards over \$3.5 million, not otherwise exempt under FAR 5.303, to the Office of the Assistant Secretary for Legislation (OASL) (Congressional Liaison). The Contracting Officer shall e-mail a copy of the contract or award document face page to grantfax@hhs.gov prior to the day of award or in sufficient time to allow OASL to make an announcement

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by 5 p.m. Washington, DC time on the day of award.

[75 FR 21510, Apr. 26, 2010]

Subpart 305.5—Paid Advertisements

305.502 Authority.

The Contracting Officer may advertise or place notices in newspapers and periodicals to announce that the contracting office is seeking proposals, quotations, or bids, as appropriate.

PART 306—COMPETITION REQUIREMENTS

Subpart 306.2—Full and Open Competition After Exclusion of Sources

Sec.

306.202 Establishing or maintaining alternative sources.

Subpart 306.3—Other Than Full and Open Competition

306.302 Circumstances permitting other than full and open competition.

306.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

306.302-7 Public interest.

306.303 Justifications.

306.303-1 Requirements.

306.304 Approval of the justification.

Subpart 306.5—Competition Advocates

306.501 Requirement.

306.502 Duties and responsibilities.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 74 FR 62398, Nov. 27, 2009, unless otherwise noted.

Subpart 306.2—Full and Open Competition After Exclusion of Sources

306.202 Establishing or maintaining alternative sources.

(a) The reference to the agency head in *FAR 6.202 (a)* shall mean the appropriate Competition Advocate (CA) cited in *306.501*.

(b)(1) The Contracting Officer shall prepare the required determination and

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findings (D & F) based on the data provided by program personnel. The appropriate CA (non-delegable) shall sign the D & F.

Subpart 306.3—Other Than Full and Open Competition

306.302 Circumstances permitting other than full and open competition.

306.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a)(2)(iv) Follow-on contracts for the continuation of R & D studies on long-term social and health programs, research studies, or clinical trials may be deemed to be available only from the original source when it is likely that award to any other source would result in unacceptable delays in fulfilling HHS' or the OPDIV's requirements.

(b) *Application.*

(5) when the head of the sponsoring program office has determined that the activity must acquire only specified makes or models of technical equipment or parts to meet the activity's program responsibility to test and evaluate certain kinds and types of products, and only one source is available. (NOTE: This criterion is limited to testing and evaluation purposes only and not for initial outfitting or repetitive acquisitions. Project Officers shall support the use of this criterion with citations from their agency's legislation and the technical rationale for the item of equipment required.)

306.302-7 Public interest.

(a) *Authority.*

(2) Agency head, in this instance, means the Secretary.

(c) *Limitations.* The Contracting Officer shall prepare a written request for approval and provide it through appropriate acquisition channels, including the HCA and Associate DAS for Acquisition, to the Secretary. The request shall include a D & F for the Secretary's signature that contains all pertinent information to support the justification for exercising the exemption to competition and a letter for the Secretary's signature notifying Congress of the determination to award a

contract under the authority of 41 U.S.C. 253(c)(7).

306.303 Justifications.

306.303-1 Requirements.

(b) The responsible Program Office must provide a written justification whenever it requests that goods or services be acquired without obtaining full and open competition. The justification must be submitted with the AP or other acquisition request document—see Subpart 307.71. The Project Officer has responsibility for preparing the justification with assistance, as necessary, from the Contracting Officer.

(1) Justifications for acquisitions at or below the simplified acquisition threshold may be in the form of a paragraph or paragraphs contained in the requisition or other acquisition request document. Justifications for acquisitions in excess of the simplified acquisition threshold shall be in the form of a separate, self-contained document, prepared in accordance with FAR 6.303 and 306.303, and titled "Justification for Other Than Full and Open Competition" (JOFOC). HHS requires use of a standard format for a JOFOC. The template for the justification is available on the ASFR/OGAPA/DA Internet Web site. Additional information may be included in the JOFOC template in accordance with OPDIV procedures.

(2) Regardless of the dollar amount of the acquisition, justifications shall—

(i) Fully describe what is to be acquired;

(ii) Provide a specific explanation of why it is not feasible to obtain full and open competition;

(iii) Be supported by verifiable facts, rather than untested or unsubstantiated opinions or conclusions; and

(iv) Be written in a manner to permit an individual without technical knowledge of the requirement to understand the supporting rationale.

(3) Preliminary arrangements with, or verbal or written commitments to, a proposed sole-source contractor shall be avoided given the statutory requirement to obtain full and open competition to the maximum extent practicable.